

**MINUTES OF THE  
NINTH REGULAR MEETING OF THE  
2001 REAPPORTIONMENT COMMISSION**

**August 9, 2001  
2:00 p.m.**

**Hawaii State Capitol  
Room 329  
Honolulu, Hawaii**

**Commissioners in Attendance:**

Mr. Wayne K. Minami, Chairperson  
Mr. Deron K. Akiona  
Ms. Jill E. Frierson  
Ms. Lori Hoo  
Mr. Shelton Jim On  
Mr. Lynn C. Kinney  
Mr. Kenneth T.G. Lum  
Mr. Harold S. Masumoto  
Mr. David Rae

**Advisory Council in Attendance:**

Mr. Stephen Goodenow, Oahu  
Mr. Jim Hall, Oahu  
Mr. Robert Ogawa, Oahu  
Ms. Geal Talbert, Oahu  
Ms. Georgine Busch, Hawaii  
Mr. Wayne Metcalf, Hawaii  
Mr. Fred Rohlfing, Maui  
Ms. Madge Schaefer, Maui  
Mr. Manuel Moniz, Maui  
Ms. Betty Chandler, Kauai  
Mr. Dennis Esaki, Kauai  
Mr. Jerome Hew, Kauai  
Ms. Trinette Kauai, Kauai

**Technical Support Staff in Attendance:**

Mr. Dwayne D. Yoshina, Office of Elections  
Mr. David Rosenbrock, Office of Elections/Reapportionment Staff  
Mr. Lawrence Chun, Office of Elections/Reapportionment Staff  
Ms. Cynthia Fukunaga, Office of Elections/Reapportionment Staff  
Mr. Strather Ing, Office of Elections/Reapportionment Staff

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Ms. Keala Naluai, Office of Elections/Reapportionment Staff  
Mr. Robynn Yokooji, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Brian Aburano, Department of the Attorney General  
Mr. Aaron Schulaner, Department of the Attorney General

**Observers Present:**

Mr. Larry Meacham, Common Cause Hawaii  
Ms. Jean Aoki, League of Women Voters  
Mr. Marc Oto, Speaker of the House Office  
Mr. Pat Omandam, Honolulu Star Bulletin  
Ms. Lynne Matusow, Downtown Neighborhood Board  
Rep. Chris Halford, House of Representatives  
Mr. Clifton Takamura, Neighborhood Board 08  
Mr. Kevin Dayton, Honolulu Advertiser  
Mr. Gregg Takayama, KHON TV News  
Mr. Bert Warashina, Senate Office  
Ms. Shannon Wood, The Koolau News  
Ms. Caroline Slugter, KITV News  
Mr. M. Kido  
Ms. Wendy Miyashiro, Representative C. Djou Office  
Ms. Pearl Johnson, League of Women Voters  
Mr. Charles Carole, League of Women Voters  
Mr. Joe Tassill  
Ms. Genevieve Suzuki, Hawaii Herald  
Ms. Renata Kossmehl, KHPR  
Ms. Bridgett Urbenski, Representative Whalen Office  
Ms. Brandi Lau, Representative Morita Office  
Mr. Larry Sagaysay, Representative Magaoay Office  
Mr. Glen Takahashi, City Clerk Office  
Ms. Joan Shinn, Representative Marumoto Office  
Ms. Lokelani Laybon, Senate Minority Office  
Mr. Brian Fuchigami, Representative Yoshinaga Office  
Ms. Mindy Jaffe, House of Representatives  
Mr. Scott Ishikawa, Honolulu Advertiser

**I. Call to Order**

Chairperson, Wayne Minami, called the Ninth Regular Meeting of the 2001 Reapportionment Commission to order at 2:21 p.m. in Conference Room 329 of the Hawaii State Capitol, Honolulu, Hawaii.

**II. Approval of Minutes**

Commissioner Lynn Kinney moved to have the minutes of the Eighth Regular Meeting of the 2001 Reapportionment Commission on August 2, 2001 approved. Commissioner Deron Akiona seconded the motion. The motion was carried unanimously by the Commissioners in attendance.

**PROCEEDINGS**

**III. Advisory Councils Testimony**

**A. Testimony by Ms. Trinette Kauai, Kauai Advisory Council Member**

Ms. Kauai expressed gratitude to the Commission for making the Reapportionment staff available to present a public briefing on Kauai that explained the process of redistricting and reapportionment.

Ms. Kauai shared some of the comments made by the north shore community at the public briefing. She mentioned that the comments were not necessarily the views of the Kauai Advisory Council.

1. Submergence - the north shore community felt that they are being submerged in the proposed senatorial district.
2. Canoe district - if a canoe district were inevitable, then canoeing with a neighbor island other than Oahu would be preferred.
3. Equalize districts - the community felt that the canoe districts should be equalized in population.
4. New canoe district - the north shore residents, who have been in a canoe district since 1981, suggested that the canoe district be changed to another part of the island instead of the north shore.
5. Commission representation - concern was expressed that there was no representation of the neighbor islands on the Commission.
6. Final plan - many residents felt that the plan was a done deal. However, Mr. Rosenbrock tried to assure the community that it is just a proposed plan and that there will be a public hearing in Kauai to allow for public testimony. They were reassured that the Commission will listen to the community's testimony.

**B. Testimony by Mr. Jim Hall, Oahu Advisory Council Member**

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Mr. Hall made a brief statement about the proposed "canoe" districts for every basic island unit. He believes that the use of "canoe" districts is "unfair, unpopular, unworkable, unconstitutional, and worst of all unnecessary." Mr. Hall stated that he had prepared a paper explaining why this is so. This paper has been distributed to the Commission members and copies are available to those who wish to obtain a copy. See Appendix A for a copy of Mr. Hall's paper.

In conversations with other Advisory Council Members, particularly those from the neighbor islands, Mr. Hall stated that it was apparent that the majority of them agreed with his assessment. Hawaii's experience with twenty years of canoe districts has proven these assumptions correct -- unfair, unpopular, unworkable, unconstitutional, and unnecessary.

Mr. Hall stated, that based on his research, he has concluded that sheer mathematical exactitude is neither a U.S. nor a Hawaii Constitutional imperative. He stated that the solution was simple. Use the Hawaii constitutionally mandated method of equal proportions to determine the number of *whole* seats each basic island should have in both houses of the legislature. For the second step in the two-tier process, district lines should be drawn. Where there are numerical inequities, the final lines should be drawn so as to balance over-representation in one house with under-representation in the other. This technique was used by the 1968 Con-Con in drawing up the new plans after the original districting plan was found unconstitutional by the U.S. Supreme Court (*Burns v. Richardson*). The Con-Con delegates drew the Kauai District under-representing Kauai in the Senate with one seat and over-representing them with three seats in the House. Even though the deviations were exceedingly large, this stratagem was found to be constitutional and is exactly the same problem we face today.

C. Testimony by Mr. Stephen Goodenow, Oahu Advisory Council Member

Mr. Goodenow informed the Commission that the Oahu Advisory Council would be holding its first meeting on August 9, 2001, at 7:00 p.m., at Washington Intermediate School. All Commission members are welcome to attend. The Reapportionment staff will be making a presentation to the general public who wish to be informed about the process of reapportionment and redistricting. There will be two more Advisory Council meetings the following two weeks at Castle High School and Mililani High School, both at 7:00pm.

**IV. Public Testimony**

There was no public testimony presented

**V. Report from the Attorney General's Office**

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Mr. Brian Aburano, the Deputy Attorney General and the Commission's counsel submitted a letter from the Attorney General's (AG) office. He summarized the findings in the letter as follows: The law was not so clear to the AG's office that they felt that they could tell the Commission what to do regarding whether or not the Commission should or should not exclude the dependents of non-resident military (DNRM). The AG's office suggests in the letter that the Commission members exercise their judgment in considering this issue – given past historical precedents, past historical policies, and, possibly, the intentions of the legislature and the voters who passed the 1992 Constitutional Amendment. See Appendix B for a copy of the AG office's letter.

#### Discussion:

1. Commissioner Shelton Jim On asking about the historical background of the Commission and the possibilities of the Commission being sued.

~~///~~ Commissioner Jim On asked Mr. Aburano that based on the historical background of the Commission and their decision of the population base, if the Commission were to follow the historical background, would the Commission be better off in respect to the direction of excluding military dependents rather than including the military dependents?

~~///~~ Mr. Aburano responded that when you look at the term "permanent resident" in the Constitution and if you follow the way that the Hawaii Supreme Court usually tries to construe constitutional terms such as that, the first thing they do is try to determine whether it has a plain and unambiguous meaning or not. If it has a plain and unambiguous meaning, then the Court construes the document without referral to any extrinsic evidence (i.e., legislative reports, what may have been the intentions of the voters). On the other hand, if the Court felt that the term was ambiguous, the Court could consider things such as the probable intentions of the voters, the legislative reports, and the history of the time. If the Courts did that, then it would play some part on how the Court decides whether or not the inclusion of dependents of non-resident military is proper or not.

~~///~~ Mr. Aburano mentioned that another component that comes in as far as the history - is that it may be easier to defend a case, in terms of consistency, when you are looking at what the Commission has apparently done in the historical past. In both 1991 and apparently in 1981 (when the reapportionment plan was drawn by a court appointed master), they did exclude the dependents of non-resident military.

~~///~~ Commissioner Jim On asked that if the Commission were to vote to exclude military dependents, it could do so with the understanding that this would be consistent with the historical policies, precedents and decisions that the AG's office had given the Commission according to the memorandum.

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~~///~~ Mr. Aburano said that it would be in line with what the prior two Commissions had done. Mr. Aburano added that if the Commission were to go the route of reconsidering its decision and exclude the dependents of non-resident military, there is no guarantee that the Commission could not be sued for that as well. There has been stated a preference in some of the Federal Constitutional Law for more inclusion rather than less. He noted that Hawaii is one of the few states that reapportion on the basis of something less than the total population.

~~///~~ Commissioner Jim On asked if there are any states that were referred to in the letter in which the voters, combined with the prior Commission, gave actual intent to a decision that was subsequently voted into law. He asked if there were any cases which concerned a similar situation that would give the Commission an idea as to whether the Court would give deference to that - as opposed to saying that inclusiveness might be a better policy overall.

- Mr. Aburano cited cases from the states of Alaska and New York. In the case of Alaska, they are to reapportion on the basis of the "civilian population", which is a part of their constitution, but Mr. Aburano did not know if the Alaska voters voted on that constitutional requirement or not. Mr. Aburano mentioned that in the Alaska case cited, for various reasons, the reapportionment authority decided to use total population rather than the civilian population for reapportionment. In the state of New York, it was an advisory opinion regarding a decision concerning a county rule or statute. Mr. Aburano did not know if the voters voted on that rule or statute. The New York Court of Appeals held that the county could use total population instead of a resident or "registered voter" population. The court specifically mentioned that more inclusiveness seemed to be the preference under Federal Law and this seems to have had some influence on the decision. Mr. Aburano stated that he was unaware of an exact case similar to the one that Hawaii is facing now.

~~///~~ Commissioner Jim On asked the Commission's legal counsel if he was aware of any lawsuits, claims or criticism from the public for the full 10-year period after the Commission voted to exclude the military dependents in 1991. Mr. Aburano stated that he was unaware of any lawsuits, claims or criticism as it pertains to the exclusion of military dependents.

2. Chairperson Minami asking about the Hawaii State Constitution and the population base.

~~///~~ Chairperson Minami asked if the Hawaii State Constitution at one time stated that reapportionment should be based on "registered voters". Mr. Aburano answered in the affirmative.

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~~///~~ Chairperson Minami asked if that was still included in the Constitution today. Mr. Aburano said that the “registered voter” population base is no longer in the Constitution because it was replaced by the “permanent resident” population base. Chairperson Minami asked if the registered voter population base in the Constitution was at one time approved by the voters. Mr. Aburano answered in the affirmative.

~~///~~ Chairperson Minami asked if it (the registered voter population base) was held unconstitutional by the Federal Court. Mr. Aburano answered that it was held unconstitutional in the *Travis v. King* case. Mr. Aburano explained that the registered voter population base was upheld by the U.S. Supreme Court on an interim basis in *Burns v. Richardson*. By the time of *Travis v. King*, years later, the Court said that conditions in Hawaii had changed such that the registered voter base was no longer a permissible constitutional base. Essentially, it didn’t measure up any longer to Federal Constitutional standards.

~~///~~ Chairperson Minami asked what the Court in that case was looking - trying to apply - in determining what is a proper basis for reapportionment. Mr. Aburano thought that they were trying to follow the *Reynolds v. Sims* case, i.e., one person-one-vote or equal representation for equal populations. Mr. Aburano went on to note that, as several members of the Commission were aware, there is a difference of opinion among the Federal Circuit Courts as to what kind of equality is required with respect to reapportionment bases.

- Mr. Aburano noted that there is what they call “Representational Equality” - which people think means you must have an equal number of legislators for an absolutely equal number of populations - regardless of whether the populations can vote, are military, are residents, or include aliens.
- Mr. Aburano also noted that there is “Electoral Equality” - and that is a proposition that you should have equal representation in terms of each person's vote being equally weighted. Mr. Aburano cited the example of the *Garza* case in which a party complained that Hispanic aliens should be excluded from the reapportionment base since their inclusion diluted the votes of persons in districts without large alien populations.

Mr. Aburano said that there is currently no solid indication as to whether the U.S. Supreme Court leaned towards Representational Equality or Electoral Equality. However, he noted that the Ninth Circuit Court of Appeals, which the Commission is subject to, in its only decision on this matter, has apparently opted for Representational Equality.

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3. Commissioner Harold Masumoto asking for clarification on the actions of the prior two Commissions and for comments with respect to Professor Van Dyke's memorandum.

~~///~~ Commissioner Masumoto asked Mr. Aburano to clarify if he said that in both 1981 and 1991, military dependents were excluded.

Mr. Aburano said that in 1991, military dependents were excluded from the population base. In 1981, it is his understanding that the military dependents were excluded. This was based on what was said in the 1991 Reapportionment Commission's final report. He tried to confirm that by going to the United States District Court (for the District of Hawaii) to look up the *Travis v. King* files, but they had been closed and sent to San Bruno, California, and it would take about four (4) weeks to get the files back at an unknown cost. Mr. Aburano noted that the reason he had to go to the court files was that a court-appointed master had put together the 1981 reapportionment plan. Mr. Aburano also asked Mr. James Funaki, who was counsel to the reapportionment commission back around that time. Mr. Funaki could not recall exactly but thought that the 1981 plan excluded military dependents.

~~///~~ Commissioner Masumoto asked Mr. Aburano if he had seen the memorandum submitted by Mr. Jon Van Dyke, professor of law at University of Hawaii-Manoa. See Appendix C for a copy of Professor Van Dyke's memorandum. Mr. Aburano answered in the affirmative.

~~///~~ Mr. Masumoto asked if Mr. Aburano concurred with Professor Van Dyke's findings. Mr. Aburano stated that he concurred with Professor Van Dyke's findings insofar as he was reporting what the courts in Alaska did. Mr. Aburano then summarized the history of reapportionment in Alaska as reported by the Alaska courts.

- First, it appears that Alaska tried to exclude all military personnel from its reapportionment base, which was unconstitutional.
- Then, they tried to exclude non-resident military, but they had trouble extracting the non-resident military population. In the *Hickel* case, they claimed that they couldn't get any information from the military as to the non-resident military population, e.g., the number of non-resident military and their locations. They tried various methodologies to extract the non-resident military population but could not do so, and the courts in Alaska apparently found that convincing in allowing them to reapportion on the basis of total population rather than excluding the non-resident military population.

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Mr. Aburano mentioned that Alaska appeared to have done a lot of work looking at alternatives in trying to extract the non-resident military population. Mr. Aburano indicated that Alaska may have had more time and resources to research such information than the Commission did in Hawaii.

~~///~~ Commissioner David Rae mentioned that in Professor Van Dykes' memorandum he indicated that in order to exclude a population, it should be done in a fair and reliable fashion. Commissioner Rae asked Mr. Aburano if he agreed with the comment. Mr. Aburano stated that as a general proposition that would be true.

- Commissioner Rae stated that his understanding of the term reliable, from statistical analysis, is that it would be repeatable time after time after time - that one would come out with the same answer. He asked, "If one were to exclude the dependents of non-resident military, whether one would necessarily come up by putting them in the same census tract time after time after time, is the data that reliable?"
- Mr. David Rosenbrock said that he was not sure. He said that there is a lag period between the time the military are stationed in Hawaii or stationed outside Hawaii and their current addresses. There is also a lag between when the dependents would move to Hawaii or out of Hawaii and their current addresses. Mr. Rosenbrock said that it is not likely to be reliable due to the lag.

4. Exclusion in a fair and reasonable manner.

~~///~~ Commissioner Jim On asked if they (military dependents) were excluded in a fair manner, whether that would be consistent not only with our Constitution but also with historical policies.

~~///~~ Assuming you can use something less than a total population base, the decisions up to now indicate that you can exclude non-residents from a state reapportionment base. As such, if you can accurately and reasonably determine the non-residents to be excluded, Mr. Aburano stated that there shouldn't be a problem with that. However, he cautioned that there is still the underlying problem that the Federal Courts may at some time decide that Hawaii should really be using total population for reapportionment as the other states do.

~~///~~ Commissioner Jim On stated that basically the Commission is caught between two principles: (1) to give deference to the voters, what they voted for and what the background is, and (2) the possibility of equal protection. He asked Mr. Aburano if that is what the Commission is facing. Mr. Aburano answered basically in the affirmative.

~~///~~ Commissioner Jim On asked that if the Commission were to exclude military dependents, would that violate the principles established in both State and Federal precedents? Mr. Aburano said that the AG office's letter indicates that if the Commission were to follow what the Commissions had done in the past, the argument could be made that that was something that had been approved in *Burns v. Richardson* and not apparently disapproved in *Travis v. King* – particularly if it turned out to be true that the reapportionment plan approved in *Travis v. King* excluded the dependents of non-resident military.

~~///~~ Commissioner Jim On asked if an equal protection argument was raised in *Travis v. King*. Mr. Aburano answered in the affirmative, but noted that the equal protection argument was with respect to the registered voter population base and not with respect to the dependents of non-resident military.

5. Foundation in precedents and the historical practice of prior Reapportionment Commissions.

Commissioner David Akiona commented based on reading the letter from the AG's office and the memo from Professor Van Dyke. Based on historical precedents regarding the Commission, the Senate Committee reports, and the subsequent information that was brought to the Commission regarding the information from the Majority staff office of the House of Representatives, it appears to him that if the Commission were to exclude the non-resident military personnel, it would be sitting with some foundation - some precedent - that this has been done in this state before, has not been challenged, and has been essentially common historical practice as far as the Reapportionment Commission has operated for at least the past two terms. Mr. Aburano confirmed the statement.

6. Running the risk of a Federal Court challenge.

Commissioner Masumoto asked whether the Commission could follow historical precedents but run the risk of a Federal Constitutional challenge unless they had a good reason for exclusion. Mr. Aburano answered in the affirmative.

Commissioner Masumoto asked if the Reapportionment staff informs the Commission that they "cannot say how many non-resident military dependents were residing in Hawaii on March 31, 2000", and the Commission cannot rebut that statement, that remains in the record of the Commission, and the Commission goes to trial, what are the chances of that statement being a

dispositive statement if the Commission excludes the non-resident military dependents?

~~Mr.~~ Mr. Aburano stated that there could be a high risk that the Commission would have to face in the courts, if the dependents of non-resident military were registered voters and they filed suit claiming a violation of equal representation because they had been excluded. Mr. Aburano noted that there is a question of whether the dependents being included in the reapportionment base is a fundamental right or not. If it is a fundamental right, then the Commission's action could be subject to strict scrutiny. If the Commission was subject to strict scrutiny, there would be a lot of questions asked as whether the Commission could have done something less (harmful to the dependents' rights).

~~On the other hand,~~ if you follow what they did or appeared to do in Alaska, they didn't appear to indicate that it (inclusion in a reapportionment base) was a fundamental right. As such, it was something that could be approved if a state could show a rational basis for its actions. If you could show a rational basis for excluding the dependents of non-resident military, such as historical state policy, the Commission's action may be able to be protected.

Commissioner Masumoto asked for clarification that historical policy might overcome lack of information. Mr. Aburano said that he is not necessarily saying that historical policy will overcome the lack of information. Mr. Aburano noted that litigation such as the *Travis v. King* case takes a considerable amount of time, and that discovery during that time may turn up the information currently lacking. In any event, if you follow the reasoning of the more recent Alaska case, if you don't have sufficient information then you may be safer including (populations within the reapportionment base).

Commissioner Masumoto asked that based upon the statement which the Commission has from the staff and without information to overcome that, would the Commission be running a very high risk, because the staff's statement is going to be a part of the record. Mr. Aburano said that the Commission would be running a risk but declined to say whether or not it would be running a "high risk".

Chairperson Minami asked a member of the staff to outline the information that they have regarding the numbers that they have and the basis for them. A member of the public asked the Chairperson if members of the audience could obtain a copy of the letter from the AG's office that the Commission referred to in their discussion.

Because there were not enough copies, a member of the audience asked that the Commission go into recess until they could make sufficient copies for

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whoever wanted one. Agreeing to this request, the Reapportionment Commission recessed at 2:51 p.m. and returned at 3:26 p.m.

**VI. Support Services**

**A. GIS Staff Services Status Report**

Mr. David Rosenbrock reported that the staff services had put together a packet for the Commission's review. The packet was prepared by David Rosenbrock, State Project Manager; Royce Jones, Project Manager for Environmental Systems Research Institute; and Sherry Amundson, Project Manager for Maptech.

Mr. Rosenbrock outlined what was contained in the packet:

1. The Attorney General's letter.
2. The memorandum by Professor Van Dyke.
3. Data Support Calculation of the Non-resident Military Population - to discuss the methodology and how the staff rolled the numbers through.
4. Military acknowledgement of Dependents - shows how a sponsor makes his or her dependents eligible for medical benefits which is in the Dependent Eligibility Enrollment Reporting System (DEERS)
5. Technical Documentation - used in the 1991 methodology for the Reapportionment Commission.
6. Reapportionment/Redistricting Population Base Data Set - prepared by David Rosenbrock on June 21, 2001 and reported to the Commission
7. E-mail by Royce Jones concerning the data that they have received.

See Appendix D for copies of the foregoing information.

Discussion:

Chairperson Minami mentioned that the issue for the Commission is whether it can identify the non-resident military dependents in trying to determine whether the Commission should include or exclude them. If the Commission does exclude the military dependents, they need to know who they are, the numbers and how they would go about excluding them.

Mr. Rosenbrock stated that the staff knows from the data received from the Defense Manpower Data Center (DMDC) what active duty military sponsors

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paid taxes in another state but were assigned to Hawaii duty stations on March 30, 2000. They know which military sponsors paid out of state taxes and they know the count (of such persons). They know the zip codes that their (the military sponsor's) duty station was located in. They have a methodology in which to roll that extraction through the census blocks in that zip code and model the number so that they could make the extraction. Through the DEERS, the staff was able to count the dependents assigned to the sponsor's social security number. The final table given to the staff by the DMDC of the dependents of non-resident military is included in the packet. The numbers have been updated from the original count reported on June 21, 2001.

Chairperson Minami asked Mr. Rosenbrock to go over the process in determining how the military dependents were identified. Mr. Rosenbrock reported that the process is the same from the original talking paper.

1. The staff asked DMDC West to extract those service members who have declared residency in another state and their dependents.
2. DMDC West said that the most reliable information was their active duty pay file. They extracted all those social security numbers that had a state other than Hawaii as the state in which they pay taxes. They extracted all of those social security numbers and all of the zip codes. That was the initial extraction.
3. The secondary extraction for dependents was from DEERS. They extracted across the field that had the same social security number as the sponsors. They found the dependents that correlated with the sponsor's social security number. They then derived the zip code of the dependent. In many cases, the zip code of the sponsor and the dependent are not the same.

Commissioner Kenny Lum asked what set of numbers would the staff use, the July 21, 2001 figures or the August 9, 2001 figures. Mr. Rosenbrock stated that if they were to make the extractions, they would have to use the latest figures from August 9, 2001.

Chairperson Minami asked how they would explain the sponsors with non-Hawaii zip codes. Mr. Rosenbrock said that some sponsors may have been assigned to Hawaii and moved. When a person changes duty stations, it is up to the person to go to the personnel detachment center and update the paperwork. Everything that they received from the military has a lag in the update of information. The lags can run from 30 days to 90 days or longer depending on the situation. There are some folks were either transferred to Hawaii and had not gone through the process, or folks that were transferred out of Hawaii and had not completed the process.

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Commissioner Lum asked of the 53,261 dependents, what percentage of these would be tracked through the zip code in terms of the numbers being excluded? Mr. Rosenbrock stated that they would be able to extract all of the dependents through zip code if that was the decision of the Commission.

Commissioner David Rae asked for clarification about the certainty that the dependents of the non-resident military are or are not permanent residents in the State of Hawaii. Mr. Rosenbrock indicated that short of defining it (the term "permanent residents"), there was no certainty. The Commissions have made assumptions in the past.

Assuming that permanent residents is something of a legal determination for which you have to have an attorney's help, and assuming that the Commission were to exclude military dependents in accordance with their zip code, Commissioner Jim On asked if the staff could then put those numbers in accordance with the zip code and indicate in which particular districts the dependents would show up belonging to. He also asked if the dependents are not scattered all around the islands but are more likely in concentrated areas. Mr. Rosenbrock answered in the affirmative.

1. Because of the concentration of the location of the dependents, Commissioner Jim On asked if the staff would be able to localize or get a pretty good or fair idea of where the 53,261 dependents are located, i.e., what area and districts or what part of the State of Hawaii that the dependents would be located in. Mr. Rosenbrock answered in the affirmative.
2. Commissioner Jim On asked if the staff had tried to actually utilize the figures and apply it to the zip code information to determine where the concentration of the number of dependents are. Mr. Rosenbrock stated that the staff has not done that because it was not a responsibility that he has been charged with based on the Commission's decision, i.e., he has not actually modeled the extraction throughout the zip codes. However, he mentioned that he has taken a look and it was quite obvious where those zip codes are. After inquiry, Mr. Rosenbrock said that the zip codes are around the military installations - where the housing is located.
3. Commissioner Lynn Kinney asked if the same would apply to the prisoners that wherever the jail was located, that's where they would be counted.
4. Commissioner Jim On asked to what degree of accuracy would Mr. Rosenbrock assign through the extraction figure and model that they have employed using the zip code and placing the dependents on the charts according to the zip codes as to where the dependents are located. Mr. Rosenbrock answered that with any statistical model it depends on what model you are using. If you only use one model, the staff's, he had 100%

confidence in his model. But if you compare the staff's model and another model then the percent accuracy would be different. He also mentioned that it is not the model that is in question; it is a substantial model and is basically the same model that was used in the past as far as how one goes about doing extractions. They would concentrate at the most dense portion of the housing unit then as the number gets used up. It is not the model itself that would be the problem; it is the data that makes up the model.

Chairperson Minami noted that the numbers of the dependents that the staff has presented are tied to sponsors that are paying taxes to a state other than Hawaii. He asked if the staff had any information to determine that the dependents in fact are non-resident or that they would automatically follow the residency of their sponsor. Mr. Rosenbrock answered in the negative.

Chairperson Minami asked how the 1991 Reapportionment Commission treated that information. Mr. Rosenbrock stated that it was a problem. He stated that according to page 3-3 of the Technical Document (made by SSRI for the 1991 Reapportionment Commission), the definition of "state of legal residence" was a consistent problem all over the services. He continued to read (from the Technical Document) that the matter of residency appeared to be a matter of convenience or a matter of personal benefit. "The entire question of residency is characterized by a lack of a consistent rule to apply," read Mr. Rosenbrock (from the Technical Document).

Chairperson Minami asked what the 1991 Reapportionment said about residence of dependents. Mr. Rosenbrock read the report that stated, "dependents were assumed to claim the same residency as the military member of the family based upon information supplied by military officials that this was the case in 98% of the families."

Chairperson Minami asked if the staff had found any document that the 1991 Commission was referring to. Mr. Rosenbrock answered in the negative. He said that he saw sampling, things given to them by the commands, that each of the services was different, and that there were insufficient counts in files. Chairperson Minami read a portion of the Technical Document (Section 3.3.2) which noted that no information on the state of residence of dependents was available. Mr. Rosenbrock added that what they (SSRI) did was to create their own statistical model so that each one of the services could try and ascertain if they could apply a value to it. He mentioned that there is a lot about estimation (in the Technical Document).

Commissioner Lori Hoo asked that based on his expertise, how he would look at the reports from the 1991 Reapportionment Commission. Mr. Rosenbrock stated that he is glad that he is doing the work now and not back then. Referring to the Technical Document, he said that this was a lot of work and he didn't know the full value of it other than statistical sampling that you really get

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out of it. He said he was glad to be doing his work now where he had databases in which to pull (information). They did not have the benefit of the databases that the DMDC West has now; they didn't have this technology back then. They were not able to cross reference the two files. The 1991 Reapportionment Commission's work was done by methods which, at best, are statistical sampling models.

Commissioner Kinney asked if it would be questionable at best on the accuracy of whatever they received back from their survey; if they received anything back at all. Mr. Rosenbrock agreed with Commissioner Kinney.

Commissioner Jill Frierson stated that the 1991 Commission obviously felt quite strongly about excluding military dependents such that they proceeded to use information that they admit to be difficult to obtain and they created a model and did it. She had meant to ask the Deputy Attorney General how much the courts look at the effect of the choice of the base rather than just the constitutionality of how the Commission chooses it. She noted that the effect of this could be very deleterious to several districts. Obviously the last Commission felt very strongly about excluding the military dependents. Mr. Rosenbrock said that he felt exactly the same way and that he didn't know; but he did feel fortunate about working on this reapportionment because there are now databases to work with. He stated that he felt that the Commission should use the databases as a basis for their decisions. He stated also that he recently noticed that the definitions of military dependents include people that he hadn't previously considered, e.g. parents, persons that had married local folks here, and voting age children. In this last respect, he noted that children are considered military dependents until the age of 23. It raises the question of if they are living here and are 19 years old and going to the University of Hawaii, are they counted as non-resident students. The UH system also has waivers for military dependents. The whole process is very complicated in trying to figure out what the intentions (are of the dependents).

Commissioner Masumoto stated that the children are considered dependents until the age of 23. On military records they are shown as dependents, but for UH purposes, the military personnel and their dependents can be counted as in-state for tuition purposes. However, if we use the military data, they would be excluded. Mr. Rosenbrock stated that there is a waiver for newly transferred military personnel that allows them to pay in-state tuition.

Commissioner Masumoto asked, to clarify in his mind, that for the active duty personnel the staff is using the pay records, and that for the dependents another database is being used. Mr. Rosenbrock confirmed this and identified the "Medical Point in Time Extract" as the database that was used to identify the dependents. Commissioner Masumoto asked if there is the same degree reliability of the data or is one more reliable than the other. Mr. Rosenbrock said that in one data base (the active duty pay records) there is self-declared intent,

in the other (the Medical Point in Time Extract) there is no declaration. He stated that he does not have the same confidence level in both numbers.

**VII. Motion to reconsider the Population Base**

Commissioner Deron Akiona moved to reconsider the Reapportionment Commission's decision to include dependents of non-resident military. Commissioner Jim On seconded the motion.

Discussion:

- A. Commissioner Jim On stated that it would be safe and prudent for the Commission, based on what he heard from the Attorney General, and notwithstanding the statistician's viewpoint of not being able to discern the intent – he thought it would be prudent to follow the historical course, the policies, what our voters had decided in the past, and stick to what the law and what the intent of the law was at the time it was adopted by the voters of the State of Hawaii. For that reason, Commissioner Jim On felt that it was necessary to ask that the Commission reconsider its position. If the Commission does not reconsider its position, consider the practical effects - if it has not been challenged in the past 20 years, it is doubtful and in fact dubious that there will be a challenge. The argument that there may be equal protection, in his personal opinion, was very deminimus considering there has been no testimony. There is also a question of whether military dependents have a right to be included in this type of redistricting plans – whether it rises to the degree of fundamental rights that would create a strict scrutiny of what the Commission does. He feels the safest and the most prudent course is to follow what the Commissions have done in the past and what they have put before the voters of Hawaii. To do otherwise would be to do violence to what was done back in 1992 - the Commission would basically be disregarding what the voters had asked or had empowered Commissioners, the government, and the people to do, which was to define permanent residents to exclude military dependents.
- B. Commissioner David Rae stated that he would be voting no on the motion to reconsider. While, he appreciated the heart-felt comments of those who have brought this issue to the attention of the Commission, he said that the debate over the last several weeks has solidified, if anything, his opinion. He stated that his thoughts are not those of an attorney, but those of a civilian who moved to Hawaii quite a few years ago not knowing how long he would stay and was embraced by this community. Commissioner Rae stated that it is not one of what the Commission did ten or twenty years ago. If the Commission did something that was wrong ten years ago, it does not make it right to continue to do it today. He expressed concern that the Commission cannot accurately determine whether the dependents of the non-resident military are indeed non-

residents. Whether they are voting members of our community. He again mentioned that they use state services; they go to state schools, their children play soccer with our children; and to exclude them from representation is just not right. Commissioner Rae noted that if the dependents are not counted here, they won't be counted anywhere else. Their spouses are defending our country, there can't be anything more fundamental than including them and counting them wherever they are in whatever concentration.

- C. Commissioner Masumoto stated that he will vote along with Commissioner Rae. The problem he is having is that the Commission is already excluding the active duty personnel, and they are now suggesting that they might want to exclude military dependents. If the Commission considers the people associated with the military as a class of people, then if you exclude the active duty and the dependents, you are excluding a class of people. If you are going to exclude a class, Commissioner Masumoto said that he wanted to be sure that they had good strong reasons for doing so. From what he heard today, the Commission does not have the data on which to make that exclusion. If the Commission doesn't have the data, Commissioner Masumoto felt that under the U.S. Constitution, it would be safer to include them (the dependents of non-resident military). He predicted that if the Commission excluded the dependents, there would be a lawsuit challenging that exclusion. Since attorneys' fees would be available for such a case, Commissioner Masumoto felt that an attorney would be found to file such a lawsuit against the Commission. As such, he felt that the safer course is inclusion.
- D. Commissioner Deron Akiona stated that originally he voted in support to include, but that he will change his vote to yes to reconsider for the following reasons:
  - 1. It is not an issue of whether there is discrimination or elimination of a class of citizens. He feels that it has become an issue of whether there was a clear historical intent on the part of the people of Hawaii to exclude this particular population. Historically, the military population is fluctuating and that might be the base of the reason why everyone will say that there is a military presence, but no one can tell you that tomorrow if there is an event that takes place in the world the population could double in the matter of three months for the state. In a year, the military population could grow to one-third of what it currently is, if the U.S. Congress changes and starts closing down bases. There is really is no basis to tell you what the population is.
  - 2. He does not see it as excluding a population by the people of Hawaii, because a non-resident military that has declared residency outside of Hawaii, his dependents could easily register to and vote in the next election. There is nothing that stops them from becoming citizens to vote in the State of Hawaii. It is clear that the intent, based on the information received to

date, of the former Reapportionment Commission, the Hawaii State Senate in their committee report, and the (information circulated under) state letterhead from the Lieutenant Governor's office and the Office of Elections clearly tells the voters in this State that if you vote for this amendment, you are voting to exclude military dependents from the permanent resident population. That vote was 210,000 or 220,000 to 100,000 – a two to one vote. The people had expressed their opinion that this population would not be part of the permanent resident base. He feels that there is better than an even-money chance that there will be a challenge to the Commission's decision - because the Commission is turning against past precedent and you're looking at a constitutional amendment that passed clearly two to one. He indicated that he felt that this was a state and not a federal issue. Unfortunately there is no clear definition of what a permanent resident is and maybe that is something that the legislature should take up in the next election so that the Commission would not have to face the same problem in ten years. Commissioner Akiona closed by stating that he will vote in support of the reconsideration.

**Roll Call:**

Commissioners Akiona, Frierson, Jim On, and Lum voted in support of reconsidering the population base; while Commissioners Hoo, Kinney, Masumoto, and Rae voted against reconsidering the population base. Chairperson broke the tie vote with a vote against reconsidering the population base. With four (4) votes for and five (5) votes against, the motion to reconsider the population base failed.

**VIII. Decision Making on the House and Senate Legislative Districts**

Chairperson Minami reported that the Commission has already presented the proposed House and Senate plans that were presented by the Technical Committee. Chairperson Minami moved that the Commission accept the proposed districts as the basis of public hearings by the Commission upon publication and the 20-day notice period. The motion was seconded.

**Discussion:**

1. Commissioner Rae wanted to clarify to the public that the plans are drafts and are subject to public hearings that will be occurring in the various communities. Chairperson Minami has asked that as many of the Commissioners attend the public hearings. Despite comments that have been made that "this is what it is," it is important for the public to realize that public testimony is persuasive and that the Commission wants to hear what communities think about this so that adjustments might be made.

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2. Commissioner Frierson commented that after a week and a half of working on the lines, she feels that despite some quibbles that she has with these maps (i.e., the canoe district from Kauai to windward Oahu) and some other issues - she also notes that from being there that there were good faith efforts, despite her problems with the population base, to fairly redraw the State. She emphasized that the plans are a draft and that it is very important now that the community come out and talk to the Commission about this. She mentioned that the people in Kailua and on the windward side, if they have a problem with the proposed canoe district, they had better be at the hearings because the Commission needs to hear from them. She indicated that she has some issues, but this was not the time for them. The time is at the public hearings.
3. Commissioner Hoo asked the staff when the detailed maps would be available for the public. Mr. Rosenbrock said that they would be ready by Monday. The staff is looking at a publication deadline of August 20, 2001. There needs to be a give and take period with the newspapers for the proofreading of the metes and bounds. In order to have the plans published on the 20th, they need to have everything ready to go on August 13. Mr. Rosenbrock indicated that the maps would have detail down to the street level, and would cover the entire State.
4. Commissioner Rae asked the staff if the maps that are currently on the website are the maps that have the street names on it. He commented that the Commission is making available to media outlets the sets of maps, and that diskettes would be available to the public on Tuesday for pick up and reproduction.
5. Commissioner Jim On asked the Chairperson if they would be taking public comment as well before the vote is taken. Chairperson Minami accepted additional public testimony.

- Testimony by Ms. Betty Chandler, Kauai Advisory Council Member

Ms. Chandler reported that the Advisory Council had been receiving interesting comments from people who reside in the canoe districts. They have asked if it is possible or legal for the people of Kauai to ask that they take three (3) House districts and give one (1) Senate district based on the feeling that they are this much (a small part) of a Senate district and this much of (a large part) of a House district. She asked if even talking about this possibility is legal, otherwise there is no point in getting the people excited about doing something.

Several Commission members stated that they were going to study Mr. Hall's proposal before answering that question.

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Commissioner Rae stated that there is always a point in the public expressing their comments. It is up to the Commission and our legal advisors to say whether they can or cannot do one thing or another.

Ms. Chandler asked if the all members of the Commission would be in attendance at the Kauai public hearing. Chairperson Minami stated that it is the Commission's goal to have as many people attend; there will be a majority in attendance as well as the Commission's legal counsel.

Commissioner Masumoto asked if the legal counsel could research the question brought up by Ms. Chandler.

The motion was carried by a unanimous vote of the Commissioners in attendance.

**IX. Public Hearing Schedule**

Chairperson Minami reported that the Commission's public hearing schedule is not ready because it is dependent on the publication of the plans. The legal requirements that after the plans are published, the Commission has to wait 20-days before public hearings can be held. The schedule for public hearings will be noted as soon as there is a definite date of publication.

Commissioner Rae asked if the schedule they had now was incorrect. Chairperson Minami announced that the current schedule is incorrect and that the hearings will be pushed back.

Mr. Goodenow announced to the public that the Advisory Councils in all the islands have been holding meetings. The public is invited to attend the Advisory Council meetings to learn about the process of the reapportionment and prepare for the public hearings.

**X. Committee Reports**

**A. Public Information Committee**

There is no report at this time.

**B. Technical Committee**

There is no report at this time.

**X. Correspondence and Announcements**

The Commission received an outline of the correspondence received

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**XI. Executive Session**

The Commission did not go into executive session

**XII. Other Business**

Commission meetings will be canceled for the rest of the month until further notice.

**XIII. Adjournment**

There being no other business to discuss the Ninth Meeting of the 2001 Reapportionment Commission was adjourned.

The Ninth Regular Meeting of the 2001 Reapportionment Commission was adjourned at 4:00 p.m.

Respectfully submitted,

Dwayne D. Yoshina  
Chief Election Officer  
Secretary of the  
2001 Reapportionment Commission